

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 27, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROSE N.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO. 2:22-CV-0218-TOR

ORDER DENYING PLAINTIFF'S
BRIEF AND GRANTING
DEFENDANT'S BRIEF

BEFORE THE COURT are the parties' briefs seeking judgment in this case. ECF Nos. 10, 21. These matters were submitted for consideration without oral argument. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, Plaintiff's request for remand, ECF No. 10, is DENIED and Defendant's request to affirm the ALJ, ECF No. 21, is GRANTED.

JURISDICTION

The Court has jurisdiction pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

ORDER DENYING PLAINTIFF'S BRIEF AND GRANTING
DEFENDANT'S BRIEF ~ 1

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: The Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158–59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An "error is harmless where it is 'inconsequential to the ultimate nondisability determination.'" *Id.* at

1 1115 (citation omitted). The party appealing the ALJ’s decision generally bears
2 the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396,
3 409–10 (2009).

4 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

5 A claimant must satisfy two conditions to be considered “disabled” within
6 the meaning of the Social Security Act. First, the claimant must be unable “to
7 engage in any substantial gainful activity by reason of any medically determinable
8 physical or mental impairment which can be expected to result in death or which
9 has lasted or can be expected to last for a continuous period of not less than 12
10 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
11 impairment must be “of such severity that [he or she] is not only unable to do [his
12 or her] previous work[,] but cannot, considering [his or her] age, education, and
13 work experience, engage in any other kind of substantial gainful work which exists
14 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

15 The Commissioner has established a five-step sequential analysis to
16 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
17 404.1520(a)(4)(i)–(v), 416.920(a)(4)(i)–(v). At step one, the Commissioner
18 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
19 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
20

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(b), 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
6 claimant suffers from "any impairment or combination of impairments which
7 significantly limits [his or her] physical or mental ability to do basic work
8 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
9 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
10 however, the Commissioner must find that the claimant is not disabled. *Id.*

11 At step three, the Commissioner compares the claimant's impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
14 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
15 severe than one of the enumerated impairments, the Commissioner must find the
16 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

17 If the severity of the claimant's impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
20 defined generally as the claimant's ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
2 404.1545(a)(1), 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
3 analysis.

4 At step four, the Commissioner considers whether, in view of the claimant's
5 RFC, the claimant is capable of performing work that he or she has performed in
6 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv),
7 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
8 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
9 404.1520(f), 416.920(f). If the claimant is incapable of performing such work, the
10 analysis proceeds to step five.

11 At step five, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing other work in the national economy.
13 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
14 the Commissioner must also consider vocational factors such as the claimant's age,
15 education and work experience. *Id.* If the claimant is capable of adjusting to other
16 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
17 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
18 work, the analysis concludes with a finding that the claimant is disabled and is
19 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
3 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
4 capable of performing other work; and (2) such work “exists in significant
5 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2);
6 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

7 **ALJ’S FINDINGS**

8 On July 9, 2019, Plaintiff filed an application for Title II disability insurance
9 benefits and Title XVI supplemental security income benefits, alleging an onset
10 date of October 1, 2018. Tr. 16. The applications were denied initially, and again
11 on reconsideration. *Id.* Plaintiff appeared at a telephonic hearing before an
12 administrative law judge (“ALJ”) on August 11, 2021. *Id.* The ALJ denied
13 Plaintiff’s claim on September 16, 2021. Tr. 32. On July 29, 2022, the Appeals
14 Council denied review, Tr. 1, making the ALJ’s decision final for purposes of
15 judicial review. *See* 20 C.F.R. §§ 404.981, 416.1481, 422.210.

16 The ALJ found Plaintiff meets the insured status requirements of the Social
17 Security Act through December 31, 2023. Tr. 18. At step one of the sequential
18 evaluation, the ALJ found Plaintiff had not engaged in substantial gainful activity
19 since October 1, 2018, the alleged onset date. *Id.* At step two, the ALJ found
20 Plaintiff had the following severe impairments: major depressive disorder, anxiety

1 disorder, obesity, asthma, and right knee chondromalacia. *Id.* At step three, the
2 ALJ found Plaintiff did not have an impairment or combination of impairments
3 that meets or medically equals the severity of the listed impairments. Tr. 19. The
4 ALJ then found Plaintiff had the RFC to perform light work with the following
5 limitations:

6 [Plaintiff] is limited to never crawling, and never climbing ladders,
7 ropes or scaffolds. [Plaintiff] is further limited to occasional stooping.
8 [Plaintiff] can less than occasionally (less than 5% of the workday)
9 kneel, crouch, and climb stairs. [Plaintiff] must avoid unprotected
10 heights and pulmonary irritants such as smoke and chemicals.
11 [Plaintiff] can perform simple, routine tasks with a Specific
12 Vocational Preparation of 2 or less. [Plaintiff] can perform work
13 involving only occasional and simple changes that do not involve fast-
14 paced type tasks. [Plaintiff] can perform work involving no
15 interaction with the public and only occasional and superficial
16 interaction with coworkers.

17 Tr. 21.

18 At step four, the ALJ found Plaintiff is unable to perform any past relevant
19 work. Tr. 30. At step five, the ALJ found, based on Plaintiff's age, education,
20 work experience, and RFC, there are other jobs that exist in significant numbers in
the national economy that Plaintiff can perform, such as silver wrapper,
advertising-material distributor, and marker. Tr. 31. The ALJ concluded Plaintiff
was not under a disability, as defined in the Social Security Act, from July 9, 2019
through September 16, 2021, the date of the ALJ's decision. *Id.*

1 **ISSUES**

- 2 1. Whether the ALJ properly evaluated the medical opinion evidence;
3 2. Whether the ALJ erred in rejecting Plaintiff’s subjective symptom
4 testimony; and
5 3. Whether the ALJ properly conducted a step five analysis.

6 ECF No. 10 at 5.

7 **DISCUSSION**

8 **A. Medical Opinion Evidence**

9 Plaintiff challenges the ALJ’s evaluation of the medical opinions of Dr.
10 Bridgette Anderson, PsyD, Dr. Kayleen Islam-Zwart, PhD, Dr. Dana Harmon,
11 PhD, and Susan M. Welde, MS. ECF No. 10–16.

12 For claims filed on or after March 27, 2017, new regulations apply that
13 change the framework for how an ALJ must evaluate medical opinion evidence.
14 20 C.F.R. §§ 404.1520c, 416.920c; *see also Revisions to Rules Regarding the*
15 *Evaluation of Medical Evidence*, 2017 WL 168819, 82 Fed. Reg. 5844-01 (Jan. 18,
16 2017). The ALJ applied the new regulations because Plaintiff’s claims were filed
17 after March 27, 2017.

18 Under the new regulations, the ALJ will no longer “give any specific
19 evidentiary weight . . . to any medical opinion(s).” *Revisions to Rules*, 2017 WL
20 168819, 82 Fed. Reg. 5844-01, 5867–68. Instead, an ALJ must consider and

1 evaluate the persuasiveness of all medical opinions or prior administrative medical
2 findings from medical sources. 20 C.F.R. §§ 404.1520c(a)–(b), 416.920c(a)–(b).
3 The factors for evaluating the persuasiveness of medical opinions and prior
4 administrative medical findings include supportability, consistency, relationship
5 with the claimant, specialization, and “other factors that tend to support or
6 contradict a medical opinion or prior administrative medical finding” including but
7 not limited to “evidence showing a medical source has familiarity with the other
8 evidence in the claim or an understanding of our disability program’s policies and
9 evidentiary requirements.” 20 C.F.R. §§ 404.1520c(c)(1)–(5), 416.920c(c)(1)–(5).

10 The ALJ is required to explain how the most important factors,
11 supportability and consistency, were considered. 20 C.F.R. §§ 404.1520c(b)(2),
12 416.920c(b)(2). These factors are explained as follows:

13 (1) *Supportability*. The more relevant the objective medical evidence and
14 supporting explanations presented by a medical source are to support his
15 or her medical opinion(s) or prior administrative medical finding(s), the
16 more persuasive the medical opinions or prior administrative medical
17 finding(s) will be.

18 (2) *Consistency*. The more consistent a medical opinion(s) or prior
19 administrative medical finding(s) is with the evidence from other medical
20 sources and nonmedical sources in the claim, the more persuasive the
medical opinion(s) or prior administrative medical finding(s) will be.

20 C.F.R. §§ 404.1520c(c)(1)–(2), 416.920c(c)(1)–(2).

1 The ALJ may, but is not required to, explain how “the other most persuasive
2 factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R. §§
3 404.1520c(b)(2); 416.920c(b)(2). However, where two or more medical opinions
4 or prior administrative findings “about the same issue are both equally well-
5 supported . . . and consistent with the record . . . but are not exactly the same,” the
6 ALJ is required to explain how “the most persuasive factors” were considered. 20
7 C.F.R. §§ 404.1520c(b)(2) 416.920c(b)(2).

8 These regulations displace the Ninth Circuit’s standard that require an ALJ
9 to provide “specific and legitimate” reasons for rejecting an examining doctor’s
10 opinion. *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). As a result, the
11 ALJ’s decision for discrediting any medical opinion “must simply be supported by
12 substantial evidence.” *Id.*

13 *1. Dr. Andersen, PsyD.*

14 Plaintiff argues the ALJ erred by rejecting the medical opinion of Dr.
15 Andersen. ECF No. 10 at 8. Dr. Andersen opined that Plaintiff had the clear
16 ability to reason and understand but was mildly impaired when it came to
17 concentration and persistence. Tr. 29. Dr. Andersen further stated Plaintiff’s
18 ability to maintain regular attendance in the workplace was markedly impaired and
19 her ability to complete a normal workweek or workday was likely moderately
20

1 impaired. *Id.* Her ability to cope with the usual stress of a workplace was also
2 markedly impaired if it involved being around other individuals. *Id.*

3 The ALJ found the opinion generally persuasive, contrary to Plaintiff's
4 contention that the opinion was rejected outright. Tr. 29. The ALJ also found the
5 opinion was supported by Dr. Andersen's own exam record and generally
6 consistent with the other medical evidence. *Id.* However, the ALJ found the
7 opinion regarding marked attendance unsupported by any evidence. *Id.* Plaintiff
8 takes issue with this finding but fails to provide any evidence to dispute the ALJ's
9 conclusion. Plaintiff's own interpretation of the record cannot overturn the ALJ's
10 conclusions. "Where evidence is susceptible to more than one rational
11 interpretation, it is the ALJ's conclusion that must be upheld." *Burch v. Barnhart*,
12 400 F.3d 676, 679 (9th Cir. 2005) (citation omitted). In any event the ALJ
13 accounted for Plaintiff's tendency to isolate in her RFC by finding Plaintiff could
14 not have any interactions with the public and only limited interactions with
15 coworkers. Tr. 21.

16 The ALJ provided substantial evidence in finding Dr. Andersen's opinion
17 regarding Plaintiff's work attendance unsupported by the record.

18 *2. Dr. Islam-Zwart, PhD.*

19 Plaintiff challenges the ALJ's conclusion that Dr. Islam-Zwart's opinion was
20 unpersuasive. ECF No. 10 at 11. Dr. Islam-Zwart opined that Plaintiff was

1 severely limited in her ability to perform activities within a schedule, maintain
2 regular attendance, be punctual, and complete a normal workday and workweek
3 without interruptions from psychologically based symptoms. Tr. 27. Dr. Islam-
4 Zwart further opined that Plaintiff had marked limitations in her ability to adapt to
5 changes in a routine work setting, communicate and perform effectively in a work
6 setting, and maintain appropriate behavior. *Id.* Finally, Dr. Islam-Zwart stated
7 Plaintiff was moderately limited in her ability to learn new tasks, perform routine
8 tasks without special supervision, be aware of normal hazards, ask simple
9 questions and request assistance, set goals, and plan independently. *Id.* Dr. Islam-
10 Zwart concluded that Plaintiff would struggle to work in a regular and sustained
11 manner. *Id.*

12 The ALJ found the opinion unpersuasive because it was inconsistent with
13 the other medical evidence. *Id.* The ALJ cited numerous medical records to
14 support his conclusion. Tr. 27–28 (citations to the record omitted). The ALJ
15 concluded the medical evidence did not support Dr. Islam-Zwart’s “extreme and
16 numerous limitations.” Tr. 28. Plaintiff alleges the ALJ “cherry-picked” medical
17 records and failed to provide context or an explanation as to how the records were
18 inconsistent with Dr. Islam-Zwart’s opinion. ECF No. 10 at 12. Again, Plaintiff’s
19 own interpretation of the evidence cannot overturn the ALJ’s rational and well-
20

1 supported conclusions. The Court finds the ALJ cited to substantial evidence in
2 rejecting Dr. Islam-Zwart's opinion.

3 3. *Dr. Harmon, PhD.*

4 Plaintiff contends the ALJ committed harmful legal error by failing to
5 address Dr. Harmon's opinion. ECF No. 10 at 14. Defendant acknowledges the
6 ALJ did not consider Dr. Harmon's opinion but asserts no error occurred because
7 Dr. Harmon's opinion was identical to Dr. Islam-Zwart's report. ECF No. 21 at
8 14. "An error is harmless if it is inconsequential to the ultimate nondisability
9 determination." *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099
10 (9th Cir. 2014) (internal quotation marks and citation omitted). Dr. Harmon
11 reviewed Dr. Islam-Zwart's report and assessed identical limitations. *See* Tr. 584,
12 592, 595. Thus, the ALJ's consideration of Dr. Harmon's report would not have
13 affected the ultimate determination of nondisability. The Court concludes the ALJ
14 did not commit harmful legal error in failing to address Dr. Harmon's opinion.

15 4. *Ms. Welde, MS*

16 Plaintiff argues the ALJ improperly rejected the opinion of Ms. Welde. ECF
17 No. 10 at 15. Ms. Welde opined that Plaintiff was severely limited in her ability to
18 maintain concentration and attention for extended periods of time, work in
19 proximity to others without distraction, make work-related decisions, interact
20 appropriately with the general public, ask simple questions or request assistance,

1 and to accept instructions and criticisms from supervisors. Tr. 28. She opined
2 Plaintiff had marked limitations in areas related to Plaintiff's ability to complete a
3 normal workday and workweek, and moderate limitations in her ability to
4 understand, remember, and carryout short, simple instructions, perform activities
5 on a schedule, maintain regular and punctual attendance, maintain socially
6 appropriate behavior and hygiene. *Id.*

7 The ALJ found Ms. Welde's opinion unpersuasive because it was a check
8 box form that was unsupported. *Id.* The ALJ also found the form inconsistent
9 with the remainder of the medical record. *Id.* To support his conclusion, the ALJ
10 cited to other medical records that indicated Plaintiff was consistently alert and
11 oriented, presented with a neutral mood, had intact and normal memory and
12 concentration, and demonstrated clear and coherent speech. *Id.* (citations to the
13 record omitted). An ALJ may properly reject a check box form that lacks an
14 explanation of the bases for their conclusions. *Molina*, 674 F.3d at 1111.
15 Accordingly, the Court finds the ALJ's conclusion that Ms. Welde's check box
16 form was unsupported and inconsistent was supported by substantial evidence.

17 **B. Plaintiff's Symptom Testimony**

18 Plaintiff first contends the ALJ did not rely on clear and convincing reasons
19 in rejecting Plaintiff's subjective complaints. ECF No. 10 at 16.

20 An ALJ engages in a two-step analysis to determine whether a claimant's

1 subjective symptom testimony can be reasonably accepted as consistent with the
2 objective medical and other evidence in the claimant's record. Social Security
3 Ruling ("SSR") 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine
4 whether there is 'objective medical evidence of an underlying impairment which
5 could reasonably be expected to produce the pain or other symptoms alleged.'" *Molina*, 674 F.3d at 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir.
6 2009)). "The claimant is not required to show that her impairment 'could
7 reasonably be expected to cause the severity of the symptom she has alleged; she
8 need only show that it could reasonably have caused some degree of the
9 symptom.'" *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d
10 1028, 1035–36 (9th Cir. 2007)).

12 Second, "[i]f the claimant meets the first test and there is no evidence of
13 malingering, the ALJ can only reject the claimant's testimony about the severity of
14 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the
15 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
16 omitted). General findings are insufficient; rather, the ALJ must identify what
17 symptom claims are being discounted and what evidence undermines these claims.
18 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
19 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
20 explain why he or she discounted claimant's symptom claims). "The clear and

1 convincing [evidence] standard is the most demanding required in Social Security
2 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
3 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

4 The ALJ is instructed to “consider all of the evidence in an individual’s
5 record,” “to determine how symptoms limit ability to perform work-related
6 activities.” SSR 16-3p, 2016 WL 1119029, at *2. When evaluating the intensity,
7 persistence, and limiting effects of a claimant’s symptoms, the following factors
8 should be considered: (1) daily activities; (2) the location, duration, frequency, and
9 intensity of pain or other symptoms; (3) factors that precipitate and aggravate the
10 symptoms; (4) the type, dosage, effectiveness, and side effects of any medication
11 an individual takes or has taken to alleviate pain or other symptoms; (5) treatment,
12 other than medication, an individual receives or has received for relief of pain or
13 other symptoms; (6) any measures other than treatment an individual uses or has
14 used to relieve pain or other symptoms; and (7) any other factors concerning an
15 individual’s functional limitations and restrictions due to pain or other symptoms.
16 *Id.* at *7–8; 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3).

17 Here, the ALJ found Plaintiff’s impairments could reasonably be expected to
18 cause the alleged symptoms. Tr. 22. However, the ALJ found Plaintiff’s
19 statements concerning the intensity, persistence, and limiting effects of those
20 symptoms were not entirely consistent with the other evidence in the record. *Id.*

1 The ALJ first considered the objective medical evidence. *Id.* As to
2 Plaintiff's claimed physical limitations due to knee pain, the ALJ noted Plaintiff
3 ambulated normally and exhibited good range of motion in July 2019. *Id.*
4 Although Plaintiff continued to report knee pain, after several sessions of physical
5 therapy in 2019, Plaintiff began to report improvements and was ultimately
6 discharged from physical therapy in November 2019. *Id.* (citations to the record
7 omitted). In January 2020, Plaintiff underwent arthroscopic surgery of her right
8 knee, which revealed no tears but did note arthritis and synovitis within the joint.
9 *Id.* Thereafter, Plaintiff reported pain and demonstrated reduced range of motion
10 and strength. *Id.* She also required the assistance of a cane for ambulation. *Id.*
11 However, by the end of January, Plaintiff reported walking without her assistive
12 device for short durations. Tr. 24. Physical therapy notes from February 2020
13 indicated Plaintiff was making good progress and had a full active range of motion,
14 although she did still exhibit limited muscle strength. *Id.* In March 2020, an
15 orthopedist indicated Plaintiff had arthritis and an BMI of 43 and advised her to
16 continue with conservative treatment, including weight loss, use of a shoe wedge
17 and assistive walking device, physical therapy, and continued use of Tylenol and
18 an NSAID. *Id.*

19 As to Plaintiff's complaints of asthma, a November 2020 CT scan revealed
20 an upper lobe nodule. *Id.* The treatment notes indicated Plaintiff was a 50 pack-

1 year smoker. *Id.* In April 2021, a treatment note indicated significant
2 improvement in Plaintiff's asthma after beginning Symbicort. *Id.*

3 Regarding Plaintiff's psychological symptoms, although she reported a
4 history of suicidal ideation and a hospitalization at age 16, treatment records
5 indicated her thought process was normal and goal directed, she was oriented to
6 person, place, and time, presented intact memory, had an adequate fund of
7 knowledge, normal concentration, and fair insight and judgment. Tr. 25. In May
8 2020, Plaintiff's PHQ-2 score was zero, indicating no depression. *Id.*
9 Additionally, in a video visit in April 2021, Plaintiff advised that she wanted to use
10 a workbook to focus on improving self-esteem and self-worth. *Id.* Although
11 Plaintiff reported daily panic attacks, difficulty maintaining personal hygiene and
12 housekeeping, and no motivation to cook or do laundry, clinical notes from May
13 2021 revealed Plaintiff's mental status and fund of information were within normal
14 limits. Tr. 26. The ALJ acknowledged Plaintiff's diagnosis of major depressive
15 disorder, panic disorder, PTSD, anxiety disorder, and unspecified
16 neurodevelopmental disorder. *Id.*

17 The ALJ concluded the objective medical evidence indicated Plaintiff was
18 able to reclaim her range of motion and stability in her knee, and weight loss led to
19 improvements with Plaintiff's asthma. *Id.* The objective psychological evidence
20 revealed mostly unremarkable exams with full orientation, intact memory,

1 sustained attention and concentration, and fair insight and judgment. *Id.* Thus, the
2 ALJ concluded the medical evidence supported a finding that plaintiff was able to
3 engage in light levels of exertion and simple, routine tasks with a Specific
4 Vocational Preparation of 2 or less. Tr. 24, 26. While objective medical evidence
5 is a relevant factor in determining the severity of a claimant's symptoms and their
6 disabling effects, an ALJ may not discredit a claimant's symptom testimony and
7 deny benefits solely because the degree of the symptoms alleged is not supported
8 by objective medical evidence. 20 C.F.R. §§ 404.1529(c)(2); 416.929(c)(2). Here,
9 the ALJ considered additional factors in rejecting Plaintiff's subjective symptom
10 testimony.

11 The ALJ briefly considered Plaintiff's ability to engage in daily activities.
12 Tr. 23. In November 2019, Plaintiff indicated her body was working "pretty well"
13 and did not have complaints of chronic pain. *Id.* However, Plaintiff indicated she
14 was struggling with depression and anxiety, which made it difficult for her to get
15 up in the daytime. *Id.* Nonetheless, Plaintiff reported cleaning house and walking
16 her dogs. *Id.* In May 2020, Plaintiff reported walking every day. Tr. 24. In April
17 2021, Plaintiff reported she had plans to clean her car and had spent time with her
18 son and two grandchildren, which positively impacted her mood. Tr. 25.

19 The ALJ next considered medication and other treatments Plaintiff
20 undertook for her claimed disabilities. Plaintiff's physical limitations improved

1 with physical therapy, use of Tylenol and NSAIDs, and a single surgical
2 procedure. Tr. 22–24. Plaintiff’s asthma improved with continued use of an
3 inhaler and the addition of Symbicort. Tr. 24. Weight loss also contributed to
4 Plaintiff’s improved physical condition. *Id.*

5 Plaintiff takes issue with the ALJ’s rejection of her subjective symptom
6 testimony on the grounds that Plaintiff’s mental health never demonstrated
7 sustained improvement and her knee pain continued to cause physical limitations.
8 ECF No. 10 at 16. However, the ALJ considered Plaintiff’s ongoing limitations
9 and accounted for them in the RFC. For example, the ALJ limited Plaintiff to less
10 than 5% of the day spent kneeling, crouching, and climbing stairs; restricted
11 Plaintiff from being exposed to pulmonary irritants; limited Plaintiff to simple,
12 routine tasks with a Specific Vocational Preparation of 2 or less; and indicated
13 Plaintiff could not interact with the public and should only have limited interaction
14 with coworkers. Tr. 21. The Court finds the ALJ provided specific and
15 convincing reasons, supported by substantial evidence, for rejection Plaintiff’s
16 symptom testimony.

17 **C. Step Five**

18 Plaintiff contends the ALJ erred by failing to conduct an adequate analysis at
19 step five. ECF No. 10 at 20. Specifically, Plaintiff asserts the ALJ provided the
20 vocational expert an incomplete hypothetical. *Id.* Plaintiff’s challenge is

essentially a restatement that the ALJ should have credited her symptom testimony and the medical opinion evidence, which the ALJ properly discounted as discussed *supra*. The Court finds the ALJ did not err.

CONCLUSION

Having reviewed the record and the ALJ's findings, this Court concludes that the ALJ's decision is supported by substantial evidence and free of harmful legal error.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiff's Brief (effectively a motion for summary judgment), ECF No. 10, is **DENIED**.
2. Defendant's Brief (effectively a motion for summary judgment), ECF No. 21, is **GRANTED**.

The District Court Executive is directed to enter this Order and Judgment for Defendant accordingly, furnish copies to counsel, and **CLOSE** the file.

DATED July 27, 2023.



Thomas O. Rice
THOMAS O. RICE
United States District Judge